

REMARKS

Claims 1-3, 6-10, 12-13, 15-17, 19-20, 22-24, 27-30, 32-34, 38-42, 44-46, and 48-54 are now pending in the application, of which Claims 8-9, 13, 20, 23, 42, and 48 are withdrawn from consideration. Claims 1-3, 6-7, 10, 12, 15-17, 19, 22, 24, 27-30, 32-34, 38-41, 44-46, and 49-54 stand rejected. Claims 1-3, 10, 16, 17, 24, and 49-54 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-3, 6, 7, 10, 12, 15-17, 19, 22, 24, 27-30, 32-34, 38-41, 44-46, and 49-54 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. While the Applicants believe the claims are clear to one skilled in the art, Applicants have amended the claims according to the Examiner's suggestion to expedite prosecution.

Regarding Claims 24, 49 and 54, the Examiner objects to the conical diameter limitation. Applicants have amended Claims 24 and 49 to clarify the direction of the taper. With respect to Claim 54, Applicants respectfully contend the first countersink diameter being adjacent the base greater than the first diameter defines the direction of the countersink and, as such, is proper.

Therefore, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112 are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-3, 6-7, 10, 12, 15-17, 19, 22, 24, 27-30, 32-34, 38-41, 44-46, and 49-54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hutter (U.S. Pat. No. 5,704,747) in view of Peterson (U.S. Pat. No. 5,096,350). This rejection is respectfully traversed.

The factual inquires set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103(a) are summarized as follows:

1. Determining scope and content of the prior art.
2. Ascertaining the difference between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or non-obviousness (such as secondary consideration).

To this end, Applicants submit herein, a Declaration of James Berry, Director for North American Sales for Emhart Division of Black & Decker. This declaration shows the commercial success of the product, which is sold to original equipment manufacturers of the automotive industry.

Disclosed within the declaration are facts which show not only the commercial success of the product, but also nexus between these sales and the claimed invention. As an example, the declaration shows the product is being sold to the automotive industry at greater than 40% price premium over competitive products. To this end, the product is being sold to original equipment manufacturers at a price which is over 140% of the price of the competitor's products. Even with a significant and legendary price pressures on the U.S. automotive industry and competitors attempting to sell product to

the original equipment manufacturers at a lower price, the purchasers continue purchasing the claimed product.

Applicants submit the specific configuration of the claimed invention meets the static and dynamic test requirements of the customer which the competitor's products do not. In this regard, Mr. Berry indicates the competitors have not yet been able to meet these requirements with their products.

Applicants submit that an investigation of the factual inquiries as set forth in *Graham v. John Deere Co.* clearly shows objective evidence indicating non-obviousness of Applicants' claimed invention. As such, Applicants respectfully request the Examiner withdraw the present rejections under 35 U.S.C. § 103(a).

CONCLUSION


It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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